

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinion of the United States District Court for the Southern Division of the Northern District of Alabama, delivered August 7, 1940, by T. A. Murphree, J., is set forth at pages 188-189 of the record and is not reported. It confirmed the findings of fact and conclusions of law made and reported to the court by the Special Master, the said report appearing on pages 157-175 of the record. The original opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 202) delivered November 14, 1941, by Hutcheson, J., is reported in 123 F. (2d) 582. An application for a rehearing was duly filed by petitioner on the 3rd day of December, 1941, and was overruled by the Circuit Court of Appeals on the 16th day of December, 1941, (R. 225).

Jurisdiction.

The decree of the Circuit Court of Appeals for the Fifth Circuit was entered November 14, 1941, (R. 208), and application for rehearing was denied on December 16, 1941, (R. 225). The jurisdiction of this Court is invoked under the provisions of section 240 (a) of the Judicial Code, as amended by the act of February 13, 1925; 43 Stat. 938 (28 U. S. C. A., section 347).

Statement of the Case.

A summary statement of the facts is given in the petition, pages 2-5.

Specification of Errors to be Urged.

All errors assigned in the petitioner's application for a rehearing filed in the Circuit Court of Appeals for the

Fifth Circuit (as in the record, pages 209-225), are intended to be urged here, also all errors believed to be found in the conclusions contained in the decision of the Circuit Court of Appeals of which review is sought.

Summary of Argument.

I. The law will not sanction the exclusive appropriation, as a trade name, of words and names, either singly or in combination, that have enjoyed a wide and general use and which have a peculiarly suggestive meaning.

II. Relief by a court of equity, on the ground of unfair competition, presupposes competition of some character, either in resemblance of the products or services offered to the public or in a similarity of the respective classes of business.

III. In absence of competition, there must be some element of unfairness, fraud or bad faith to warrant injunctive relief.

IV. In cases of unfair competition, intention or motive is not material if the acts complained of are lawful in themselves.

V. In the absence of unlawful design or actual or threatened damage, injunctive relief will be withheld in cases of unfair competition even though the parties have corporate names that are almost identical and are engaged in similar lines of business.

VI. The Federal Rules of Civil Procedure are violated by a disregard, without just cause, of findings of fact made by a Special Master.

ARGUMENT.

The law will not sanction the exclusive appropriation, as a trade name, of words and names, either singly or in combination, that have enjoyed a wide and general use and which have a peculiarly suggestive meaning.

The word "Aetna" to which respondent is now asserting a right to exclusive use, is geographic in origin. It is the Latin name for a lofty and majestic volcano in Sicily. For more than 3,000 years, even before the rise and fall of the Roman Empire, this mountain has been called "Aetna", although the modern Italian spelling has been changed to read "Etna". This mountain is as well known as the famous Rock of Gibraltar, the Pikes Peak of our own country, or the Mount Ararat of biblical fame.

As a result of long and continued use, this name has been widely and generally employed throughout the length and breadth of the United States, and elsewhere, to characterize many different kinds and classes of business enterprises. It has received a general and diversified use which extends to window washing enterprises, detective agencies, building and loan concerns, smelting and refining companies, hotels, furniture stores, garages, banks and almost a countless number of other varied business activities. The word has had a peculiar attractiveness to the public mind, and has been the kind of word which business men will adopt as a suitable name for almost any type of business which they desire to promote. It can be said without fear of contradiction, that the name "Aetna" is as common a name as any other in the business vocabulary.

The word "Auto" which is merely a corruption or abbreviation of the word "automobile" is, likewise, in universal usage. It, undoubtedly, is typically suggestive of the mechanical contrivance that is so widely used and so well known in this and other countries.

This Court has recognized that there is a certain class of words that have enjoyed a wide and general use by the public, because of their peculiarly suggestive meaning, and has held, in many cases, that such names are not subject to exclusive appropriation, or preemption, as trade names, by individuals or corporations, outside of the particular fields in which they operate.

In the case of *Goodyear's India Rubber Glove Manufacturing Company v. The Goodyear Rubber Company*, 128 U. S. 598, 32 L. Ed. 535, the court said:

"Names which are thus descriptive of a class of goods cannot be exclusively appropriated by anyone. * * * Names of such articles cannot be adopted as trade marks, and be thereby appropriated to the exclusive right of anyone; nor will the incorporation of a company in the name of an article of commerce, without other specification, create any exclusive right to the use of the name." (l. c. 603)

The same pronouncement of law with reference to geographical names was set forth in the case of *The Columbia Mill Company v. William W. Alcorn, et al.*, 150 U. S. 460, 37 L. Ed. 1144:

"The appellant was no more entitled to the exclusive use of the word 'Columbia' as a trade mark, than he would have been to the use of the word 'America', or 'United States', or 'Minnesota' or 'Minneapolis'. These merely geographical names cannot be appropriated and made the subject of exclusive property. They do not, in and of themselves, indicate anything in the nature of origin, manufacture, or ownership; and in the present case the word 'Columbia' gives no information on the subject of origin, production or ownership." (l. c. 467)

The leading case on this subject is that of *American Steel Foundries v. Robertson*, 269 U. S. 372, 70 L. Ed. 317. In

this case the plaintiff sought to compel the registration of the word "Simplex" in connection with the manufacture and sale of brake beams and similar appliances. The application was resisted by the Simplex Electrical Heating Company which manufactured insulating and conducting wires. Mr. Justice Sutherland, speaking for the Court, said as follows:

"The word involved in this case is one of a large class of words which have for a great many years been much used because of their peculiarly suggestive meaning. For other examples there are the words 'Aeme', 'Anchor', 'Champion', 'Eureka', 'Excelsior', 'Ideal', 'Jewel', 'Sunlight', 'Triumph', 'Victor'. It would be a serious matter if the law actually permitted anyone who chose to do so to organize a series of corporations with names containing these words, respectively, and thereupon virtually withdraw these words from public use as trade marks and monopolize them by preventing their registry as such." (l. c. 163)

The same doctrine was announced by the Circuit Court of Appeals for the Seventh Circuit in the case of *Pabst Brewing Co. v. Decatur Brewing Co., et al.*, 284 F. 110. In that case, the Pabst Brewing Company had for many years used and employed the words "Blue Ribbon" as a trade name to describe beer produced by it. The defendant made use of the same words in the production and sale of a malt extract which was used commonly during the era of prohibition as an ingredient in the manufacture of beer. The trial court refused to grant an injunction prohibiting the use of the words "Blue Ribbon" and the Court of Appeals, in sustaining the judgment below, based its opinion entirely on the fact that the words involved enjoyed a wide and general use and could not be exclusively appropriated.

The reports are replete with many cases touching the same point and consequently the rule now is generally

acknowledged to be that exclusive appropriation of a commonly and generally used word will not be permitted, but that the rights to such a word will be limited to the peculiar type of business with which such name has in any particular case been associated.

The Circuit Court of Appeals, in the instant case, has apparently recognized this statement of the law, and has inferentially concluded that the word "Aetna" could not be exclusively appropriated, but that the use of this word in connection with the word "Auto" could be preempted. The exact language of the Court in this particular, is as follows:

"What is confusing here and what makes it plain that the defendant must be held accountable for its actions, is that it has not contented itself with merely using the word "Aetna" for its name, but has taken the combination "Aetna Auto", which plaintiff by its advertising, has made *completely suggestive of itself.*" (Italics ours)

The word "Auto" is a word of common and general usage and could not by itself be appropriated and withdrawn from general use. It is, therefore, submitted that the use of the two words "Aetna" and "Auto", in combination, can no more be exclusively appropriated, or preempted, than could the single words themselves, unless employed in some fanciful manner.

Two recent cases, one decided by the Supreme Court of the State of Kentucky, and the other by the Supreme Court of the State of California, are referred to herein, on account of the close analogy of the particular trade names involved.

The first of these cases is that of the *Travelers Insurance Machine Co. v. The Travelers Insurance Co. of Hartford, Conn.*, 142 Ky. 523, 134 S. W. 877, and on rehearing 143

Ky. 216, 136 S. W. 154. In this case, the machine company was organized to manufacture automatic machines for the sale of accident insurance policies. The Travelers Insurance Company of Hartford sought to enjoin the machine company from using the name "Travelers Insurance" or the word "Travelers" in connection with the word "Insurance" as a part of its corporate name. The injunction was denied and the Court stated as follows:

"We hold that the term 'Travelers Insurance' is a generic term and that no one has a right to the exclusive use of it or may complain of its use by another so long as that use is not made to operate to the detriment of its competitor." (l. c. 880)

The other case is that of the *American Automobile Association, et al v. American Automobile Owners Association*, 216 Cal. 125, 13 Pac. (2d) 707. An injunction to prevent the defendant from doing business under its corporate name was denied:

"No claim is made as to the right of monopoly by reason of copyright, or trade mark, and the letters A.A.A., or as to the exclusive right of appellant to appropriate the words 'American Automobile', for the reason that these words are in common use and are regarded by the law as common property, which may be used by others in combination with other descriptive words, provided they are not used in combination with such other words or symbols or designs as to render it probable that they would mislead persons possessing ordinary powers of perception. Generic terms and words descriptive of place are not subject to exclusive appropriation." (l. c. 131)

The Circuit Court of Appeals, in the case at bar, did not restrict the use of the words in question to a secondary meaning, but in effect granted to respondent the exclusive

right to their use. Petitioner does not believe, however, that the law justifies, or sanctions, such withdrawal of these words, either singly or in combination, from general use by the public in connection with varied and miscellaneous kinds and types of business.

II.

Relief by a court of equity, on the ground of unfair competition, presupposes competition of some character either in resemblance of the products or services offered to the public or in the similarity of the respective classes of business.

The bill in this case states very definitely that respondent is unfairly competing with Complainant. The term "competition" has a well recognized meaning and is understood to include an effort or attempt on the part of two separate concerns to attract to themselves the same type, style and class of business, or stated in another way, to divert the customers from one concern to another. It is this manifest effort to reach and divert business that energizes the life of trade. Healthy competition is encouraged and the law only frowns on that competition that is unfair. In order to gain the protection of the courts, the owner of a vested property right in a trade name must, therefore, either allege and prove competition of some kind or nature or must allege and prove that his business or good name has been injured or threatened with injury by wilful and fraudulent practices and methods.

A case which exemplifies the competitive feature, in an extreme manner, is that of *Borden Ice Cream Co. et al. v. Borden's Condensed Milk Co.*, 201 F. 510 (C. C. A. 7). Injunctive relief prayed for by the Milk Company to restrain the use of the name "Borden" in the manufacture and sale

of ice cream was denied. The reasons therefor were stated by the court as follows :

“Non-exclusive trade names are public property in their primary sense, but they may in their secondary sense come to be understood as indicating the goods or business of a particular trader. Such trade names are acquired by adoption and user, and belong to the one who first used them and gave them value in a specific line of business. * * * In the absence of competition, the old company cannot assert the rights accruing from what has been designated as the secondary meaning of the word ‘Borden’. The phrase ‘unfair competition’ presupposes competition of some sort. In the absence of competition the doctrine cannot be invoked.” (l. c. 514)

This case has been widely quoted with approbation in some circuits and has been criticized in others. The reasoning of the case, however, is clear and logical and can easily be reconciled with the later decisions in other circuits that at first reading seemed to be divergent. It has been closely analyzed by the Court of Appeals for the Tenth Circuit in the case of *Standard Oil Co. of New Mexico, Inc. v. Standard Oil Co. of California*, 56 F. (2d) 973, and on the other hand has been quoted with approval in the case of *Joseph Schlitz Brewing Co. v. Houston Ice and Brewing Co., et al.*, 241 F. 817, which was later affirmed by this Court, 250 U. S. 28, 39 Sup. Ct. 401.

The principles of the *Borden* case have been affirmed by this Court in the leading case of *Beech-nut Packing Co. v. P. Lorillard Co.*, 273 U. S. 629, 47 Sup. Ct. 481, that sustained a decision of the Court of Appeals for the Third Circuit, 7 F. (2d) 967. In this case the Packing Company brought a suit in equity to enjoin the Tobacco Company from using the words “Beech-nut” on cigarettes and chewing tobacco. It appeared that the words “Beech-nut” had originally

been used by the Packing Company for the marketing and sale of hams and bacons and that later the same mark had been used in connection with other food products.

The hyphenated words used to designate the respective products presented an originality of descriptive quality difficult to equal. This fact made this case an outstanding exposition of the law on this subject. The matter was presented in all of its aspects to these two higher courts. We quote from the opinion of the Circuit Court of Appeals as follows:

“The reason why the same mark may be used by different persons when appropriated to different classes of goods is because its goods, being of different classes, do not come into competition with each other. *Borden Ice Cream Co. v. Borden's Condensed Milk Co.*, 201 F. 510.

* * * * *

“The merchandise of the plaintiff and defendant belonged, therefore, to different classes. As the owner of a trade mark, both on authority and reason, may not be restrained from its use on goods of one class, notwithstanding the identical trade mark is used on goods of another class, we conclude that the defendant did not infringe plaintiff's trade mark, and so may not be restrained from using its trade mark on tobacco products.” (l. c. 970)

In the case at bar no element of competition is alleged, nor do the facts outside and beyond the bill show even the slightest resemblance to market or business competition. The bill specifically states that the respondent is authorized by its charter to engage in the “business of automobile liability, fire, theft, collision and property damage insurance.” So far as is shown by the evidence this is the only class of business in which the respondent is engaged or

authorized to engage. Petitioner, on the other hand, is engaged solely in the finance business, namely, the making of loans to individuals with automobiles as collateral security therefor.

These two classes of business are widely separated and in no sense pervade the same field. Insurance companies transact their business under special statutory enactments, are supervised by separate State regulatory commissions and are specifically prohibited from engaging in any branch of business that has the flavor of financial operations. On the other hand, finance companies, including banks, building and loan companies, and other corporations engaged in lending money, are required to incorporate under separate and distinct provisions and in general are under the direction of the banking and finance departments of the State.

Not only are the methods of operation of the two companies in question wholly different, but the customers or public to which they respectively appeal are entirely different. One company offers a service of insurance and the other a service of financial aid.

A few of the leading cases that reflect the distinction between market and class competition are herein referred to. In the case of *Del Monte Special Food Co. v. California Packing Corporation*, 34 F. (2d) 774, the defendant was engaged in the business of selling oleomargarine, while the Complainant, which sought to enjoin the use of the words "Del Monte" was engaged in selling other packaged foods for personal consumption, but did not in fact engage in the sale of oleomargarine. The Circuit Court of Appeals for the Ninth Circuit granted the injunction solely on the ground that the two corporations were engaged in the same class of business, namely, the marketing of food products.

Another case often cited is that of the *Yale Elec. Corporation v. Robertson, et al.*, 26 F. (2d) 972, (C. C. A. 2),

in which the Complainant used the term "Yale" on hardware products, but did not in fact sell or manufacture flash lights or batteries. The court issued the injunction on the ground that both classes of products were properly classified as hardware, and later modified the injunction so as to restrict the same to flash lights.

In the case of *Duro Co. v. Duro Co.*, 27 F. (2d) 339, (C. C. A. 3), the Complainant corporation was engaged in manufacturing and selling internal combustion engines not operated by electricity, while the respondent was engaged in the business of manufacturing and selling spark plugs. The court in that case issued an injunction on the same theory, namely, that both companies were engaged in the manufacture of products that were within the general class of mechanical contrivances.

In the case of *Akron-Overland Tire Co. v. Willys Overland Co.*, 273 F. 674, (C. C. A. 10), the Complainant corporation was engaged in the business of manufacturing and selling automobiles and automobile parts. The respondent corporation was in the business of retreading and renewing automobile tires. An injunction was granted under the announced rule that automobile tires fell within the same general trade classification as automobile and automobile accessories.

In the case of *Aunt Jemima Mills Co. v. Rigney & Co.*, 247 F. 407 (C. C. A. 2), the Complainant was engaged in the marketing of a prepared pancake flour bearing the picture of a happy, smiling colored cook. The respondent endeavored to use a like picture and the name "Aunt Jemima" in connection with the manufacture and sale of syrups and sugar cream. The injunction was issued for the reason that purchasers of the respondent's merchandise would likely conclude that syrup was part and parcel of the food marketing business of the Complainant.

All these cases fall definitely into the same category,

namely, that of actual or threatened competition within the same class or characteristics of merchandise sold.

The facts in the instant case come directly within the reasoning of the *Beech-Nut* case. The sale of insurance is entirely different from the lending of money. The one is protection for a specified premium, the other a service to be compensated by the payment of interest. The line of demarcation between these two enterprises is as sharp and clear as could be found in connection with any other two divergent types of business.

III.

In absence of competition, there must be some element of unfairness, fraud or bad faith, to warrant injunctive relief.

This principle is clearly stated in the *Beech-Nut Packing Company* case, *supra*, in the Circuit Court of Appeals, 7 F. (2d) 967. We quote from this opinion as follows:

"We are aware, however, that equity may be invoked without market competition. Emphasis should be placed on the word 'unfair', rather than 'competition'. If by unfair and fraudulent means the plaintiff is injured and the public deceived, equity will enjoin, whether the injury comes through competition or in some other way. * * * Within the principles announced in these cases, or in any other way, has the defendant injured the plaintiff in its property or reputation? * * * (l. c. 970)

"The essence of the wrong in unfair competition consists in the sale of goods of one manufacturer or vendor for those of another, and, if defendant so conducts its business as not to palm off its goods as those of complainant, the action fails. *Howe Scale Company v. Wyckoff, Seamans and Benedict*, 198 U. S. 118, 25 S. Ct. 609." (l. c. 971)

A late case illustrating this point is that of the *Standard Oil Co. of New Mexico, Inc. v. Standard Oil Co. of Cali-*

fornia, decided in 1932, by the Circuit Court of Appeals for the Tenth Circuit, which is reported in 56 F. (2d) 973. The Complainant was engaged in the distribution and sale but not in the production or manufacture of petroleum products.

The court granted the injunction, irrespective of the question of competition, only because there was a very evident design and intention, that was manifestly fraudulent, to obtain business at the expense of the Complainant corporation and its affiliates which was one of the well known Standard Oil group.

Petitioner in the case at bar was fully aware of the widespread use of the word "Aetna" in connection with countless and varied corporations and businesses. It had a perfect right to assume and believe that this name was public property so long as there was no design or intention to invade the particular field of business in which the respondent was engaged. The bill of respondent contains no allegation that petitioner was motivated by any unfair or fraudulent purposes; and the allegations as to its procedural methods do not indicate any tactics that could be classified as unfair or fraudulent.

The bill is not bottomed on the fact that petitioner and respondent are engaged in the same general class or field of business, but entirely on a theory new to the law, of a remote possibility of injury to reputation or credit through the use of the same word in two dissimilar corporate names.

IV.

In cases of unfair competition, intention or motive is not material if the acts complained of are lawful in themselves.

The Court of Appeals for the Fifth Circuit seems to have overlooked the fact that in a case where injunctive relief is prayed for on the ground of unfair competition, the

essential point to be determined is whether the acts then being undertaken were such as to cause actual damage or indicate a probability of substantial injury to the business or good will of the complaining party in the future. Under such circumstances, the court should be guided by what is being done at the time suit is instituted. If, on the other hand, relief is predicated on actions that had been definitely discontinued before suit, then relief is granted from a punitive standpoint rather than for the prevention of the continuance of an actual or threatened wrong. In line with this method of determination, motive is entirely irrelevant and a good intention would not excuse unlawful acts, nor would a bad intention make wrongful acts which are proper in themselves.

The Court of Appeals for the Sixth Circuit in the case of *Globe-Wernicke Co. v. Fred Macey Co.*, 119 F. 696, stated this rule very clearly:

“It is not alleged that the defendant represents to the public that its bookcases are of the complainant’s manufacture, but only that it makes bookcases and sections in the same sizes, styles, varieties of wood, and finish as the complainant’s and that by reason thereof the public are misled. The intention is not material, if the defendant has the right to do that which is complained of. On the other hand, if the thing done is wrongful, the lack of intention would not excuse. In either case, the motive is immaterial to any question involved in the present inquiry.” (l. c. 704)

To the same effect was the decision by the Supreme Court of California in the case of *American Automobile Association et al. v. American Automobile Owners Association, Inc.* *Banc, supra*.

“Appellants have argued that the evidence in the record would justify or compel a finding that the respondents had been prompted by a bad or evil intent

to design their emblems in the manner described. The Court has found that they did not deceive an ordinarily careful person, in the manner and form of the law. If that is so, the act is not unlawful. An uncompleted intent is not actionable. In civil law as well as in criminal law there must be a joint operation of act and intent to constitute an unlawful act. If the act is not unlawful, the intent would not make it so. Everyone who enters the field of competition desires and plans to draw customers from his competitors. Unless his acts are unlawful, his avarice is not actionable." (l. c. 142)

V.

In the absence of unlawful design or actual or threatened damage, injunctive relief will be withheld in cases of unfair competition even though the parties have corporate names that are almost identical and are engaged in similar lines of business.

This principle of law has been established by many decisions of various Courts of Appeal. In the case of *Continental Ins. Co. v. Continental Fire Assn.*, 101 F. 255, the Court of Appeals for the Fifth Circuit held that the Continental Insurance Company, a corporation of New York, did not have the exclusive right to the use of the word "Continental" in its corporate name and was not entitled to an injunction even though the respondent was also engaged in the insurance business, since there was no attempt to deceive the public as to the identity as to the two corporations.

This rule was followed in the case of the *Pulitzer Pub. Co. v. Houston Printing Co.*, 11 F. (2d) 834. In this case the St. Louis Post Dispatch sought an injunction against the Houston Post Dispatch. Injunctive relief was denied and the court stated as follows:

"The evidence adduced would not warrant the granting of relief on the ground of unfair competition. So

far as appears, Appellee did not intend or attempt to palm off its paper as that of the Appellant and such deception was not a natural and probable result of its conduct. The two papers are readily distinguishable as they do not resemble each other in type, get up or general appearance. The evidence adduced failed to prove wrongful conduct on the part of the Appellee or actual or probable deception of ordinary buyers of newspapers having the effect of bringing about purchases of Appellee's paper by persons desiring that of the Appellant. Relief on the ground of unfair competition cannot properly be awarded in the absence of proof of wrongful conduct and at least probable substantial injury therefrom to the business of the complainant parties" (l. c. 836).

This same question was presented in the case of *Fidelity Bond & Mortgage Co. v. Fidelity Bond & Mortgage Co. of Texas*, 37 F. (2d) 99. It was there held that a Missouri corporation was not entitled to injunctive relief against the use of the same name by a Texas Company that was engaged in exactly the same kind and type of business where no injury was shown to have been received by the complainant or any deception to the public, or any fraudulent intent on the part of the respondent.

A recent case decided by the Circuit Court of Appeals for the Third Circuit is likewise of interest in this connection. This is the case of *Bond Stores, Incorporated, v. Bond Stores, Inc.*, 104 F. (2d) 124. An injunction to restrain the respondent from the use of the word "Bond" as a part of the corporate title was denied even though it was shown that the complainant was engaged in the manufacture and sale, at retail, of wearing apparel, and that the respondent was engaged in the business of a cleaner, dyer, tailor, and repairer of wearing apparel.

To the same effect are the following cases:

Richmond Remedies Co. v. Miles Medical Co., 16 F. (2d) 598 (8 C. C. A.);

Certainfeed Products Corporation v. Philadelphia and Suburban Mortgage Guarantee Co., 49 F. (2d) 114 (3 C. C. A.);

Shaler Co. v. Rite-Way Products Co., 107 F. (2d) 82 (6 C. C. A.);

Schneider Brewing Co. v. Century Distilling Co., 107 F. (2d) 699 (10 C. C. A.);

Colburn v. Puritan Mills, Inc., 108 F. (2d) 377 (7 C. C. A.);

General Shoe Corporation v. Rosen, 111 F. (2d) 95.

In the case at bar respondent did not allege any wrongful conduct on the part of petitioner or any probable injury that might result from the operations of petitioner. The evidence produced by respondent signally failed to show anything of this nature and the Master so found.

VI.

The Federal Rules of Civil Procedure are violated by a disregard, without just cause, of findings of fact made by a special master.

The courts of the United States should follow without deviation the New Federal Rules of Civil Procedure when findings of fact by a Master or Trial Judge are involved. Rule 53 of such Federal Rules specifically provides that findings of fact shall not be set aside unless the same are clearly erroneous and that due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.

It is assumed in this connection that where a Special Master has been directed to hear and receive evidence in the cause, the rule as to credibility of witnesses should apply with equal force to such Master as in the case of a trial Judge because in such instances the Master is acting for the court. In the instant case the Court of Appeals for the

Fifth Circuit disregarded entirely the findings of fact by the Special Master and failed to give any weight whatsoever to them without, so far as appears, any justifiable cause or reason. The specific findings of fact among others that were disregarded are as follows:

“6. The public has not been confused or led to uncertainty by the similarity of Respondent’s corporate name to the Complainant’s corporate name.”

“7. There is no probability that the public will be confused or led to uncertainty by the similarity of the Respondent’s corporate name to the Complainant’s corporate name.”

“9. The Respondent’s corporate name was not adopted for the purpose of passing its business off as Complainant’s business or as one connected in any manner with Complainant.”

WHEREFORE, it is submitted that this petition for a writ of certiorari to review the decision of the Circuit Court of Appeals for the Fifth Circuit should be granted.

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